

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

K.K.	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. 3:18-cv-1547
	§	
TYLER SCOTT McPHILLIPS and	§	
RANDALL KEITH McPHILLIPS,	§	
	§	
Defendants.	§	

**DEFENDANT TYLER SCOTT McPHILLIPS' RESPONSE TO PLAINTIFF'S
MOTION TO REMAND AND WITHDRAWAL OF NOTICE OF REMOVAL**

Defendant Tyler Scott McPhillips ("McPhillips") files this Response to Plaintiff's Motion to Remand and Withdrawal of Notice of Removal and states to the Court as follows:

1. On April 12, 2018, Plaintiff K.K. ("Plaintiff") filed her Original Petition ("Petition") against Defendant McPhillips in the 116th Judicial District Court of Dallas County, Texas in the case styled *K.K. v. Tyler Scott McPhillips, et al.*, Cause No. DC-18-04893.
2. On June 13, 2018, McPhillips engaged LYNN PINKER COX & HURST, LLP as counsel for the state court matter.
3. After receiving the service papers from McPhillips, Counsel noticed that the Officer's Return had misleading return of service dates. Counsel immediately confirmed the execution of service date with McPhillips, who recalled receiving service on May 15, 2018.
4. On June 14, 2018, McPhillips filed a Notice of Removal (Doc. No. 1).
5. The following is a snapshot of the Officer's Return. See App. at 1.

Kari Malone

OFFICER'S RETURN

Case No. : DC-18-04893

Court No. 116th District Court

Style: K. K.

vs.

Tyler Scott McPhillips, et al

Came to hand on the 15th day of MAY, 20 18, at 12:09 o'clock P.M. Executed at Irvine, CA,
within the County of Orange at 7:45 o'clock P.M. on the 24th day of April,
20 18, by delivering to the within named

TYLER SCOTT MCPHILLIPS

32466 CROWN VALLEY PARKWAY, APT# 312, DANA POINT, CA 92629

each, in person, a true copy of this Citation together with the accompanying copy of this pleading, having first endorsed on same date of delivery. The distance actually traveled by
me in serving such process was 12 miles and my fees are as follows: To certify which witness my hand.

6. On June 26, 2018, Counsel for Plaintiff filed a Motion to Remand contending that McPhillips' Notice of Removal was untimely. (Doc. No. 11).

7. Upon receipt of the Motion to Remand, Counsel for McPhillips immediately contacted Counsel for Plaintiff to discuss the inaccuracies in the Officer's Return. Counsel for Plaintiff responded: "My understanding is that the process server *inadvertently stated in the return that he received the citation to serve on May 15 instead of the correct date of April 15.*" App. at 2.

8. Counsel also contacted McPhillips to discuss whether he remembered being served on April 24, 2018 rather than May 15, 2018. McPhillips could not recall.

9. Out of an abundance of caution, Counsel also spoke with the process server who confirmed through conversation and through his notes that he incorrectly filled out the Officer's Return and that service was executed on April 24, 2018. App. at 4.

10. After speaking with Plaintiff's Counsel and the process server, and reviewing the process server's notes, and Counsel has confirmed that the Officer's Return relied upon in filing the notice of removal was in fact inaccurate and the notice of removal was untimely.

11. Accordingly, McPhillips hereby immediately files the request to withdraw the Notice of Removal.

For the foregoing reasons, McPhillips does not oppose the relief requested in Plaintiff's Motion to Remand and respectfully withdraws the Notice of Removal (Doc. No. 1).

Dated: June 29, 2018

Respectfully submitted,

/s/A. Shonn Brown

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**ATTORNEYS FOR DEFENDANT
TYLER SCOTT McPHILLIPS**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served *via facsimile* this June 29, 2018:

/s/Jared D. Eisenberg

Jared D. Eisenberg